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UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF CALIFORNIA

UNITED STATES OF AMERICA, Plaintiff, v. FELIX HERNANDEZ-CHAVEZ (1), MODESTA LUISA MAGANA (3), Defendants.	Criminal Case No. 08CR1166-W Date: July 29, 2008 Time: 11:00 a.m. Place: Courtroom 7 The Honorable Thomas J. Whelan **UNITED STATES' RESPONSE IN OPPOSITION TO DEFENDANTS' MOTIONS TO** **(A) COMPEL DISCOVERY AND PRESERVE EVIDENCE;** **(B) SEVER REMAINING DEFENDANTS; AND** **(C) FILE FURTHER MOTIONS;** **TOGETHER WITH MEMORANDUM OF POINTS AND AUTHORITIES**

The plaintiff, UNITED STATES OF AMERICA, by and through its counsel, Karen P. Hewitt, United States Attorney, and Joseph J.M. Orabona, Assistant United States Attorney, hereby files its Response in Opposition to Defendants' above-referenced Motions. This Response in Opposition is based upon the files and records of the case, together with the attached statement of facts and memorandum of points and authorities.

I

STATEMENT OF THE CASE

On April 15, 2008, a federal grand jury in the Southern District of California returned a one-count Indictment against Defendant Felix Hernandez-Chavez ("Defendant Hernandez"). The Indictment charges Defendant Hernandez with one count of possessing approximately 86.75 kilograms (191.25 pounds) of marijuana with intent to distribute, in violation of 21 U.S.C. § 841(a)(1). On April 15, 2008, Defendant Hernandez was arraigned on the Indictment and entered a plea of not guilty. On June 4, 2008, a federal grand jury in the Southern District of California returned a two-count Superseding Indictment against Defendants Hernandez, Hugo Montes-Martinez ("Defendant Montes"), Modesta Luisa Magana ("Defendant Magana"), and Juan Jesus Limon ("Defendant Limon). Count One of the Superseding Indictment charges Defendants Hernandez and Montes with possessing approximately 86.75 kilograms (191.25 pounds) of marijuana with intent to distribute, in violation of 21 U.S.C. § 841(a)(1). Count Two of the Superseding Indictment charges Defendants Montes, Magana, and Limon with possessing 50 kilograms or more, to wit, approximately 105.40 kilograms (231.89 pounds) of marijuana, with intent to distribute, in violation of 21 U.S.C. § 841(a)(1).

On June 24, 2008, Defendants Montes and Limon pled guilty to Superseding Informations. On July 15, 2008, Defendant Hernandez filed motions to compel discovery, preserve evidence, sever remaining defendants, and grant leave to file further motions. The United States files the following response in opposition to these motions, and incorporates by reference the Statement of Facts and Response in Opposition to other defendants' motions, which was filed with the Court on June 18, 2008.

II

STATEMENT OF FACTS

The United States hereby incorporates by reference the Statement of Facts contained in its previously filed Response in Opposition on June 18, 2008.

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III

THE UNITED STATES' RESPONSE IN OPPOSITION TO DEFENDANT'S MOTIONS ALONG WITH MEMORANDUM OF POINTS AND AUTHORITIES

A. THE COURT SHOULD NOT ISSUE ANY DISCOVERY ORDERS

As of the date of this Motion, the United States has produced to each Defendant approximately 338 pages of discovery (including reports of the arresting officers and agents, a criminal history report, photographs of the car and marijuana seized), reports containing summaries of Defendants' post-arrest statements, and 1 CD-rom containing the recorded dispatch transmissions on May 8, 2008. The United States will continue to comply with its obligations under Brady v. Maryland, 373 U.S. 83 (1963), the Jenks Act (18 U.S.C. §3500 et seq.), and Rule 16 of the Federal Rules of Criminal Procedure ("Fed. R. Crim. P."). At this point the United States has received **no** reciprocal discovery. In view of the below-stated position of the United States concerning discovery, the United States respectfully requests the Court issue no orders compelling specific discovery by the United States at this time. With respect to Defendant Hernandez's specific requests for discovery, the United States incorporates by reference its Response in Opposition filed on June 18, 2008, which covers each of Defendant's specific requests.

B. THE UNITED STATES DOES NOT OPPOSE SEVERANCE OF COUNTS

The United States maintains the position that it properly joined Defendants and the counts pursuant to the Federal Rules of Criminal Procedure when it obtained the Superseding Indictment on June 4, 2008. In light of the fact that Defendants Montes and Limon pled guilty on June 24, 2008, the United States now takes the position that it does not oppose the Court severing Counts 1 and 2 in the Superseding Indictment, as long as the Court grants Defendants' motion without prejudice.

C. THE COURT MAY GRANT LEAVE TO FILE FURTHER MOTIONS

The United States does not oppose Defendants' request to file further motions if they are based on new discovery or other information not available to Defendant at the time of this motion hearing.

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IV

CONCLUSION

For the foregoing reasons, the United States requests the Court deny Defendant's Motions to Compel Discovery and Preserve Evidence, Sever Remaining Defendants, and Grant Leave to File Further Motions, unless unopposed.

DATED: July 22, 2008

Respectfully submitted,

KAREN P. HEWITT
United States Attorney

/s/ Joseph J.M. Orabona
JOSEPH J.M. ORABONA
Assistant United States Attorney

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF CALIFORNIA

UNITED STATES OF AMERICA, Plaintiff, v. FELIX HERNANDEZ-CHAVEZ (1), MODESTA LUISA MAGANA (3), Defendants.	Criminal Case No. 08CR1166-W **CERTIFICATE OF SERVICE**

IT IS HEREBY CERTIFIED that:

I, Joseph J.M. Orabona, am a citizen of the United States and am at least eighteen years of age. My business address is 880 Front Street, Room 6293, San Diego, California 92101-8893.

I am not a party to the above-entitled action. I have caused service of the United States' **Response in Opposition to Defendant Hernandez's Discovery Motion, Motions to Sever, and Motion to File Further Motions** together with a **Statement of Facts and Memorandum of Points and Authorities** on the following parties by electronically filing the foregoing with the Clerk of the District Court using its ECF System, which electronically notifies them.

1. L. Marcel Stewart
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3. Timothy Scott
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   Lead Attorney for Defendant Magana

I declare under penalty of perjury that the foregoing is true and correct.

Executed on July 22, 2008.

/s/ *Joseph J.M. Orabona*
JOSEPH J.M. ORABONA
Assistant United States Attorney